

REMARKS/ARGUMENTS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Independent claims 1, 5, 6 and their dependent claims have been canceled. Applicants reserve the right and intend to file a Divisional application on these claims. The present amendment is intended to focus upon independent claim 7.

Claims 1-12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Hillebrand et al. (US Patent 6,571,003 B1) in view of Hawkins et al. (disclosed in the IDS) and further in view of Bechara et al. (WO 97/29441). Applicants traverse this rejection.

Claim 7 is directed to a method for identifying progress of a cosmetic product treatment. This is not a theoretical exercise to entice a potential consumer into purchase of a particular product that fulfils the promise of a computer simulation. The claimed method requires a step (vi). Therein the consumer is required to actually have applied the product at some point during the method. Subsequent to product application, a further image of the body feature is captured. Thereafter the consumer can compare the captured initial digitally transformed image against that of the later time captured image. Efficacy of the actual product treatment is thereby monitored and factored into the progress of the actual cosmetic product treatment. Validation of the performance of cosmetic products is a significant issue in the industry for which few tools exist.

Neither Hillebrand nor Hawkins nor Bechara teach a method for identifying progress of a cosmetic product treatment which utilizes actual product treatment within the method. Most particularly Hillebrand is merely a simulation of what could happen with the treatment. There is no actual cosmetic treatment. Thus, an actual treatment has not been envisioned by the reference as an integral part of the method. There simply is no validation step. By validation is meant that the consumer can compare actual results to before and track progress in skin health. Progress by the comparison of before versus after is by the present invention an improvement for confirming/validating that the consumer's appearance is moving in the desired direction with a particular treatment technology. For this reason, the combination of art fails to present a *prima facie* case of obviousness.

There are other distinctions. Hillebrand evaluates based on the results from a population of people. See column 4 (line 46). Comparisons with this population will be dependent on the consumers tested that build up the database. These consumers are not screened for clinically and perceptually-relevant attributes. They are random selections rather than focused ones on a particular attribute of interest. As a consequence, population statistics using the Hillebrand algorithm are gathered for a condition that is not well-focused in the indiscriminantly available population panel.

By contrast, the present invention generates a model for healthy attribute transformations by specifically screening for appropriate consumers. Secondly, they are graded by experts to exhibit a range of healthy skin.

The morphing algorithm of Hillebrand is based on properties of edge enhancement and image blurring to existing "defects" on the skin. By contrast, the nature of the healthy morph models of the present invention are generated from expert systems of healthy skin and predictive transformation of a particular attribute or combination of attributes that can be simulated on a subject that does not currently have the appearance of that particular "defect". For example, a subject with no wrinkles may still be transformed to show a realistic example if wrinkles were to become present on the subject's face. Hillebrand cannot deal with a face that has no initial defect.

Hawkins et al. is concerned with averages and caricatures of subjects with a high and low degree of healthy attribute. These are not focused upon individual subjects or transforms of individual subjects. The reference clearly does not disclose how these transforms would relate a consumer/subject finding their perceptually-relevant preference.

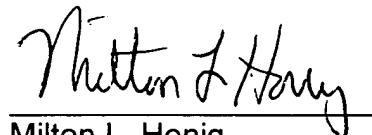
Unlike the present invention, Hawkins et al. does not cover how morphing may be applied for predictive transformations of products. Neither does it describe how these transformations would be made on an individual's own face.

Behara et al. was introduced for disclosing the tiling feature. The reference discloses tiling different overlays for eyeglasses to select preference. These transformations are discrete, additive transformations. They do not incorporate the (1) multivariate and (2) continuous properties of gradually transforming healthy skin attributes. In order to transform in these multivariate health axes, a greater understanding of the human visual system in terms of thresholds of noticeability and

expert (clinical) systems is required. These are deficient in the reference. By contrast, the present invention requires transformation of attributes done through expert evaluator studies. Perceptual relevance and expert systems are clearly not required for displaying pictures with eyeglasses drawn over the top of a non-transforming human face.

In view of the foregoing amendment and comments, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,


Milton L. Honig
Milton L. Honig
Registration No. 28,617
Attorney for Applicant(s)

MLH/sm
(201) 840-2403